

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Toby D. Wilcox, :
: Plaintiff(s), :
: Case Number: 1:07cv554
vs. : Chief Judge Susan J. Dlott
Ohio Penal Industries, et. al., :
: Defendant(s). :
:

ORDER

This matter is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to United States Magistrate Judge Stephanie K. Bowman. Pursuant to such reference, the Magistrate Judge reviewed the pleadings and filed with this Court on March 22, 2011 a Report and Recommendation (Doc. 55). Subsequently, the plaintiff filed objections to such Report and Recommendation (Doc. 62).

Since the time the objections were filed on April 29, 2011, defendants filed a Motion to Strike the objections (Doc. 63) stating that plaintiff had filed the objections out of time. However, the plaintiff had filed a Motion for Extension of Time to file Objections to the Report and Recommendation on April 5, 2011 (Doc. 58) and the Court granted that motion on April 6, 2011 (Doc. 59) allowing plaintiff to have 30 days from April 6, 2011 to file the objections. Therefore, since plaintiff filed his objections timely, defendants Motion to Strike (Doc. 63) is

DENIED.

The Court has reviewed the comprehensive findings of the Magistrate Judge and considered de novo all of the filings in this matter. Upon consideration of the foregoing, the

Court does determine that such Recommendation should be adopted.

Accordingly, Defendant Gulley has remedied the original deficiency in the Suggestion of Death, and Plaintiff has failed to timely move for substitution or otherwise timely to bring a claim against the estate under Ohio law. Therefore, Defendant Gulley is **DISMISSED**.

IT IS SO ORDERED.

s/Susan J. Dlott
Chief Judge Susan J. Dlott
United States District Court